IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 8TH DECEMBER 2006 / 17TH AGRAHAYANA 1928

WP(C).No. 10019 of 2006(P)

PETITIONER:

DANAVAN @ DANASEELAN, S/O. RAJAPPAN,
PARAMBATHERIL KATTATHURUTHU, VADAKKEKKARA P.O.,
NORTH PARUR, ERNAKULAM DISTRICT.

BY ADV. SRI.N.HARIDAS
SRI.H.SUNDEEP
SRI.P.N.SASIDHARAN

RESPONDENTS:

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1. HON'BLE OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM, REP. BY ITS SECRETARY.

2. SECRETARY TO GOVERNMENT, LOCAL SELF GOVERNMENT INSTITUTIONS, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

3. SARUN, S/O. JYOTHI, VALLATHERIL, KATTATHURUTHUKARAYIL, MOOTHAKUNNAM VILLAGE, PARUR TALUK, ERNAKULAM DISTRICT.

4. SECRETARY, VADAKKEKKARA GRAMA PANCHAYAT, MURAVANTHURUTHU, VADAKKEKKARA P.O., NORTH PARUR, ERNAKULAM DISTRICT.

R4 BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
R3 BY ADV.SRI.V.S.CHANDRASEKHARAN
R2 BY GOVT.PLEADER SRI.K.J.MOHAMED ANSAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC 10019/2006

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF REPORT DT.13.9.01 IN I.A. NO.1822/2001 IN OS NO.592/2001 FILED BY THE ADVOCATE COMMISSIONER BEFORE THE MUNSIFF'S COURT, PARUR.

EXT.P2 : TRUE COPY OF NOTICE DT.24.9.01 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.

EXT.P3 : TRUE COPY OF NOTICE DT.25.9.01 ISSUED TO THE 4TH RESPONDENT AT THE INSTANCE OF THE PETITIONER.

EXT.P4 : TRUE COPY OF NOTICE DT.13.2.06 IN OP NO.559/2005 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P5 : TRUE COPY OF PETITION DT.2.7.05 FILED BY THE 3RD RESPONDENT BEFORE THE 1ST RESPONDENT.

EXT.P6 : TRUE COPY OF WRITTEN STATEMENT DT.8.3.06 TO EXT.P5 PETITION, FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P6(a) : TRUE COPY OF LIST OF WITNESSES DT.8.3.06 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT ALONG WITH EXT.P6 WRITTEN STATEMENT.

EXT.P6(b): TRUE COPY OF LIST OF DOCUMENTS DT.8.3.06 FILED BY PETR. BEFORE R1 ALONG WITH EXT.P6 WR.STATEMENT.

EXT.P7 - TRUE COPY OF ORDER DT.8.3.06 IN OP.559/05 PASSED BY R1.

EXT.P8 - TRUE COPY OF LAWYER NOTICE DT.3.3.06 ISSUED TO R4 BY SRI.M.RAJENDRAN, ADVOCATE AT THE INSTANCE OF PETR.

EXT.P9 - TRUE COPY OF PLAINT DT.8.3.06 IN O.S.179/06 FILED BY PETR. BEFORE THE MUNSIFF'S COURT, NORTH PARUR.

EXT.P10 - TRUE COPY OF REPORT DT.17.3.06 IN I.A.564/06 IN O.S.179/06 FILED BY JUMMY VARGHESE, ADV.COMMR., BEFORE THE MUNSIFF'S COURT.

EXT.P11 - TRUE COPY OF LAND TAX RECEIPT DT.14.6.06 ISSUED BY VILLAGE OFFICER, MOOTHAKUNNAM IN FAVOUR OF EARLIER OWNERS IN RESPECT OF LAND IN SY.236/9.

EXT.P12 - TRUE COPY OF JUDGMENT DT.6.7.06 IN RSA.490/06 OF THIS COURT.

EXT.P12(a) - TRUE READABLE PORTIONS OF EXT.P12 JUDGMENT IN DO.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C) No.10019 OF 2006

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DATED THIS THE 8th DECEMBER, 2006

J U D G M E N T

Ext.P7 order passed by the Ombudsman for Local Self Government Institutions is under challenge by the writ petitioner who was impleaded as additional respondent No.2 in O.P.No.559 of 2005, the complaint filed by the 3rd respondent before the Ombudsman. Even though upon getting notice from the Ombudsman, Ext.P6 written statement raising various contentions was filed by the writ petitioner, that Ext.P7 order does not refer to any of those contentions at all. One of the contentions seriously raised in the written statement is the one based on Section 271M(4)(d) of the Kerala Panchayat Raj Act, 1994. Section 271M(4)(d) reads as follows:-

> "(4) The Ombudsman shall not enquire into matters relating to,--
>
> xx xx xx xx
>
> (d) any complaint filed after the expiry of three years from the date on which the matter complained against has taken place:"

2. Ext.P5 is copy of the complaint which was filed by the 3rd respondent. Clause 5 therein deals with the nature of the complaint

and details. Para.2 of the informations given against Clause 5 begins with the following sentence:-

Sri.N.Haridas, learned counsel for the petitioner would submit that it was on 2.7.2005 that Ext.P5 was filed before the Ombudsman. According to counsel, the Ombudsman did not have jurisdiction to enquire into Ext.P5 complaint in as much as it was filed after the expiry of more than three years from the date on which the matter complaint against, i.e., filling up of the thodu in question, had taken place.

3. Sri.Philip T.Varghese, learned counsel for the 4th respondent

and Sri.V.S.Chandrasekharan, learned counsel for the party respondent would support Ext.P7 order passed by the Ombudsman on merits. Mr.Philip in particular would endeavour to answer the question of limitation raised by Mr.Haridas by referring to the proviso to Section 271M(4)(d) which reads as follows:-

> "Provided that the Ombudsman may entertain such complaint if the complainant satisfies that he had sufficient reason for not filing the complaint within the specified period."

Counsel would refer to the narration made in Ext.P5 complaint of the details regarding pendency of various suits in the local civil courts and submit that the pendency of those suits was a sufficient reason not only for the Panchayat but also for the 3rd respondent to defer the filing of the complaint till the date of its actual filing. But a careful scrutiny of the proviso which is quoted above will show that it is for the complainant to satisfy the Ombudsman that the complainant, who in this case is only the 3rd respondent, had sufficient reasons not to file the complaint within the period of three years. I do not find any averment through which the 3rd respondent-complainant has tried to satisfy the learned Ombudsman of the sufficiency of the reasons for

him for not filing the complaint within the specified period. Reading of Ext.P7 will show that the question of limitation raised by the writ petitioner was not noticed by the Ombudsman at all.

Under these circumstances, I am of the view that on the question of limitation (if not on the other grounds raised in the Writ Petition), Ext.P7 is liable to be set aside. Ext.P7 will stand set aside. Ext.P5 complaint will go back to the Ombudsman for Local Self Government Institutions to be disposed of by him in accordance with law. Fresh orders as directed above will be passed by the Ombudsman at his earliest and at any rate within four months of receiving copy of this judgment. I am sure that the Ombudsman will refer to all the contentions raised by the writ petitioner in Ext.P6 written statement and particularly the question of limitation raised therein.

The Writ Petition is allowed as above. No costs.

(PIUS C. KURIAKOSE, JUDGE)

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